

Message Text

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C O N F I D E N T I A L STATE 194143

DELIVER AMBASSADOR RICHARDSON AT OPENING OF BUSINESS

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: PRELIMINARY DRAFT OF PROPOSED AGENDA FOR PRC
MEETING

1. THERE FOLLOWS A PRELIMINARY DRAFT OF THE PROPOSED AGEN-
DA FOR PRC MEETING TENTATIVELY SCHEDULED FOR AUGUST 16.
FINAL AGENDA WILL BE CABLED UPON COMPLETION. YOUR IMMEDIATE
REVIEW AND COMMENTS ARE NEEDED ON THIS DRAFT, AS OTHER
WORKING AND BRIEFING PAPERS WILL NEED TO BE PREPARED VERY
SOON.

2. BEGIN TEXT:

-- PURPOSE OF MEETING. TO REVIEW THE US DELEGATION'S
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NEGOTIATING INSTRUCTIONS FOR THE SEABED PORTION OF THE UN
CONFERENCE ON LAW OF THE SEA (LOS). THE 7TH LOS SESSION
WILL RESUME AUGUST 21 FOR FOUR WEEKS.

-- DESCRIPTION OF THE ISSUE. THE NEGOTIATIONS ON A REGIME
TO ADMINISTER MINERAL EXPLOITATION IN THE DEEP SEABED HAVE
BECOME A MAJOR OBSTACLE TO AGREEMENT ON A COMPREHENSIVE

TREATY GOVERNING OCEAN USES. THE BASIC OBJECTIVE OF THE US AND OTHER PROSPECTIVE MINING COUNTRIES HAS BEEN TO ESTABLISH A REGIME WHICH PROVIDES ASSURED ACCESS TO STATE-

SPONSORED MINING COMPANIES. IN SO DOING, WE ARE SEEKING A WORKABLE INSTITUTIONAL MODEL FOR EXPLOITATION OF OTHER INTERNATIONAL RESOURCES (E.G. ANTARCTICA). THE BASIC COMPROMISE WE ENVISAGE IS A "PARALLEL ACCESS SYSTEM"--ONE SIDE ALLOWING STATE-SPONSORED MINERS TO OPERATE, AND THE OTHER PROVIDING RESERVED SITES FOR AN INTERNATIONAL MINING "ENTERPRISE", AS WELL AS FOR LDCS.

-- THE BASIC OBJECTIVE OF THE GROUP OF 77 HAS BEEN TO ESTABLISH A MINING REGIME UNDER THEIR CONTROL, WITH WIDE DISCRETION TO REGULATE ACCESS TO THE SEABED. WITH THE EXCEPTION OF A FEW LAND-BASED MINERAL PRODUCERS, MOST LDCS VIEW THE SEABED NEGOTIATION PRIMARILY IN POLITICAL TERMS--AS AN OPPORTUNITY TO SHAPE A NEW INSTITUTION ALONG LINES SUGGESTED BY THE NEW INTERNATIONAL ECONOMIC ORDER.

-- THE ISSUE WE FACE IS HOW MUCH FURTHER TO GO IN ACCOMMODATING G-77 DEMANDS FOR AN ACTIVE ROLE IN THE SEABED MINING REGIME, WITHOUT COMPROMISING OUR BASIC OBJECTIVE OF ASSURED ACCESS. THE CHOICE OF OPTIONS WILL DEPEND ON OUR ASSESSMENT OF A) THE IMPORTANCE OF US SEABEDS INTERESTS; B) THE URGENCY OF ACHIEVING AN LOS TREATY; AND C) THE CONFIDENTIAL

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PROSPECTS FOR GAINING CONGRESSIONAL SUPPORT.

--NEGOTIATING OPTIONS.

--I. PURSUE A SEABED MINING REGIME WHICH SATISFIES ALL OF THE BASIC CRITERIA OF REASONABLY ASSURED ACCESS FOR STATE-SPONSORED MINERS (I.E., CURRENT INSTRUCTIONS REGARDING THE PARALLEL SYSTEM):

--A. AUTOMATICITY AND NON-DISCRIMINATION IN LICENSING PROCEDURES - APPLICANTS WOULD BE REQUIRED TO MEET OBJECTIVE TECHNICAL AND FINANCIAL CONDITIONS FOR A MINING LICENSE.

--B. SECURITY OF TENURE FOR MINING CONTRACTS.

--C. FINANCIAL ARRANGEMENTS THAT STRESS PROFIT-SHARING AND ALLOW AN ADEQUATE RETURN ON INVESTMENT.

--D. PROVISIONS THAT PROMOTE -- BUT DO NOT MANDATE -- TRANSFER OF TECHNOLOGY TO THE ENTERPRISE ON COMMERCIAL TERMS.

--E. A DECISION-MAKING STRUCTURE IN THE SEABED AUTHORITY THAT SAFEGUARDS THE MAJOR ECONOMIC INTERESTS, PROVIDING THE KEY WESTERN MINING COUNTRIES WITH EFFECTIVE BLOCKING POWER ON SUBSTANTIVE ISSUES.

--F. A TEMPORARY PRODUCTION CONTROL THAT, WHILE NOMINALLY PROTECTING CURRENT LANDBASED CAPACITY OF NICKEL AND COPPER PRODUCERS, DOES NOT EFFECTIVELY CONSTRAIN SEABED MINING.

--G. REVIEW CONFERENCE PROVISIONS THAT DO NOT PREJUDGE THE OUTCOME OR RESTRICT PERMANENT STATE-PARTY ACCESS TO THE SEABED.

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--ASSUMPTIONS:

--1) A SEABEDS AGREEMENT COMPATIBLE WITH THESE OBJECTIVES IS UNLIKELY TO EMERGE IN THE NEAR TERM, BECAUSE MOST DEVELOPING COUNTRIES CONTINUE TO PERCEIVE THE NEGOTIATION IN POLITICAL/IDEOLOGICAL TERMS, RATHER THAN ECONOMIC. NEVERTHELESS, WITH ACTUAL COMMERCIAL MINING EXPECTED TO BEGIN AFTER 1985, AN EARLY AGREEMENT IS NOT ESSENTIAL TO US INTERESTS. AS SEABED MINING BECOMES A REALITY IN A FEW YEARS, DEVELOPING COUNTRIES COULD EVENTUALLY PERCEIVE MORE CONCRETE ECONOMIC INTERESTS AND THUS BE PREPARED TO REACH A REASONABLE ACCOMMODATION.

--2) ACHIEVEMENT OF A SEABEDS TEXT THAT PROTECTS US ECONOMIC AND INSTITUTIONAL INTERESTS IS NOT LESS IMPORTANT THAN ACHIEVEMENT OF OUR OTHER OBJECTIVES IN THE LOS CONFERENCE.

--3) THE FAVORABLE PARTS OF THE TREATY ALREADY NEGOTIATED WILL REMAIN LARGELY INTACT WHILE AN ACCEPTABLE SEABEDS TEXT IS BEING SOUGHT.

--4) ALTERNATIVES TO A COMPREHENSIVE TREATY (E.G. DOMESTIC LEGISLATION) CAN SERVE AS A VIABLE INTERIM FRAMEWORK FOR SEABED MINING WHILE NEGOTIATIONS PROCEED.

--II. PURSUE A SEABEDS REGIME AS IN OPTION I BUT BE WILLING TO ACCEPT A FINAL AGREEMENT THAT MAY FAIL TO SATISFY ONE OR TWO OF THE ASSURED ACCESS CRITERIA. IN RETURN FOR SUCH CONCESSIONS, WE WOULD REQUIRE SPECIFIC SAFEGUARDS AGAINST POSSIBLE DENIAL OF US ACCESS (E.G., A CLAUSE PERMITTING WITHDRAWAL FROM THE SEABED REGIME.)

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--ASSUMPTIONS:

--1) ASSURED ACCESS WOULD BE JEOPARDIZED IF ANY ONE OF THE CRITERIA ABOVE IS NOT MET. NEVERTHELESS, GIVEN A FAVORABLE SCENARIO, SUCH A FLAWED SYSTEM COULD, IN EFFECT, PROVIDE ACCESS SIMILAR TO OPTION I. FOR EXAMPLE, WITHOUT BLOCKING POWER ON SUBSTANTIVE VOTES, THE KEY MINING STATES

MIGHT STILL MANAGE TO FORM COALITIONS WITH OTHER COUNTRIES TO PROTECT BASIC INTERESTS. SIMILARLY, A PRODUCTION CONTROL FORMULA THAT AT FIRST APPEARS marginally RESTRICTIVE MIGHT FULLY ACCOMMODATE ACTUAL SEABED MINING DEMAND.

--2) ACCEPTANCE OF GREATER RISK THAN IN OPTION I THAT THE SEABED REGIME WILL NOT PROVIDE ASSURED ACCESS IMPLIES A CORRESPONDINGLY GREATER EXPECTATION OF GAINS TO STRATEGIC, NAVIGATIONAL AND OTHER INTERESTS, AND GREATER URGENCY TO ACHIEVE AN LOS TREATY.

--3) THE EXISTENCE OF CERTAIN SAFEGUARDS, SUCH AS A WITHDRAWAL CLAUSE, COULD BE SUCCESSFULLY NEGOTIATED AND WOULD PROVIDE A CREDIBLE LEVER TO INDUCE THE SYSTEM TO ACCOMMODATE THE INTERESTS OF KEY MINING COUNTRIES.

--III. IF OPTION I OR II PROVE UNATTAINABLE IN THE SHORT TERM (1-2 YEARS), BE PREPARED TO ACCEPT A SEABEDS REGIME THAT FAILS TO SATISFY MAJOR CRITERIA OF ASSURED ACCESS.

--ASSUMPTIONS:

--1) THE BEST ATTAINABLE SEABEDS REGIME IN THE NEAR TERM COULD RESEMBLE CURRENT NEGOTIATING TEXTS IN THE CONFERENCE: THAT IS, ENDOW THE INTERNATIONAL SEABED AUTHORITY WITH DISCRETION TO RESTRICT STATE PARTY ACCESS, TO SET ONEROUS FINANCIAL CONDITIONS, TO FORCE JOINT VENTURES WITH THE ENTERPRISE AND TO COMPEL TECHNOLOGY TRANSFER. THE DEVELOP-
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ING COUNTRIES WOULD MOST LIKELY CONTROL BOTH THE ASSEMBLY AND COUNCIL, AND, AFTER 25 YEARS, COULD IMPOSE A MORATORIUM ON LICENSING UNTIL A PERMANENT REGIME IS NEGOTIATED THAT IS EVEN MORE TO THEIR LIKING.

--2) THE ECONOMIC COSTS OF AN UNSATISFACTORY SEABEDS REGIME IN A COMPREHENSIVE LOS TREATY, WOULD BE MORE THAN

OFFSET BY GAINS TO STRATEGIC, NAVIGATIONAL AND OTHER INTERESTS.

--3) FAILURE TO REACH AGREEMENT SOON WILL LEAD TO BREAK-DOWN OF THE CONFERENCE, OR TO FORCED ACCEPTANCE LATER OF SEABEDS TEXTS EVEN LESS ADVANTAGEOUS THAN THOSE CURRENTLY ATTAINABLE, AND/OR TO EROSION OF TEXTS IN PARTS OF THE TREATY NOW FAVORABLE TO OUR INTERESTS.

--4) INTERIM ALTERNATIVE APPROACHES TO REGULATION OF SEABED MINING (UNILATERAL LEGISLATION AND/OR OF MINI-TREATY) ARE NOT VIABLE.

--END TEXT. VANCE

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